IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

MFA.No. 286 of 2001(B)

OPMV.806/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT:

Salam @ Abdul Salam, S/o. Kunju Mohammed, Poolam Tharakkal House, Njamanenghat P.O., Thrissur District.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS:
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1. State of Kerala, rep. by Chief Secretary, Govt. of Kerala, Trivandrum.

2. K.V.Sadanandan, Kadalikkatil House, Avathur, Thrissur.

3. Director General of Police, Head Quarters, Trivandrum.

4. United India Insurance Co. Ltd., Br. Thrissur.

5. A.A.Abdul Khader, S/o. Aboobacker.

6. Mallik, S/o. Hydrose, Padomtharakal House, Naanariendgad, Thrissur.

7. The Oriental Insurance Co. Ltd., Br. Thrissur.

BY GOVERNMENT PLEADER
SRI.MATHEWS JACOB (SR.) FOR R7
SRI.P.R.RAMACHANDRA MENON FOR R4

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & V. Giri, JJ.
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M.F.A.No.286 of 2001
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Dated this the 23rd day of August, 2007.

JUDGMENT

Koshy,J.

Appellant - claimant suffered serious injuries in a motor accident. He claimed an amount of Rs.4,33,550/- as compensation. The Tribunal calculated a compensation of Rs.1,05,500/- and thereafter in view of the contributory negligence assessed at 60% on the part of the appellant only Rs.42,200/- was awarded. Petitioner challenged the quantum of compensation as well as the finding of contributory negligence on his part.

2. In paragraph 17 of the award, the Tribunal discussed the matter regarding contributory negligence in a detailed manner. The Tribunal has not accepted the contention of the petitioner that the accident occurred while the scooter he was riding was hit by the jeep from behind. A reading of the evidence would show that the accident occurred due to head on collision.The police

charge sheeted both the drivers. But the Tribunal fixed more negligence on the part of the appellant because of the position of the vehicle in the scene mahazar. Scene mahazar was taken after the accident. The exact spot of accident cannot be found out as the scooter being a small vehicle is likely to be moved in view of the impact of the accident. The offending vehicle was the police jeep and was the bigger vehicle. The contention of the appellant is that the police has written the mahazar in such a way so as to avoid their liability and that is why the police had charge sheeted him. However, from the scene mahazar, it can be seen that there was head on collision and therefore, we are of the opinion that the negligence has to be apportioned equally between both the drivers. We also refer to the decision of the Apex Court in this regard reported in **Bijoy Kumar Dugar** v. **Bidyadhar Dutta & Ors.** - (A.I.R. 2006 S.C. 1255). With regard to the injury suffered, after considering the wound certificate, the Tribunal found as follows:

> "He had two large vertical lacerated wounds on the scalp extending from the forehead to the frontal area exposing the skull. There were superficial bruises

on the right side of the face including ear. There was a punctured wound with deformity on the right upper arm. There was multiple abrasions. One tooth on the lower jaw was also lost. X-ray revealed fracture to right humerus. There was a fracture to the frontal bone and fracture to the right metacarpal and mandible. Ext.A10 series are the discharge summaries which would go to show that he was treated in the hospital till 4.3.1994. C.T. scan of the skull revealed pneumo cephallus and cerebral oedema. During hospital stay, he developed perinchancitis of right ear and was cured by slough cutting. Skin grafting was done for the forearm with flap taken from the thigh. He developed sores over the medial aspect of right elbow. So the 'U' slab which was formerly applied was removed and arm sling was given. He was again admitted to the same hospital on 6.4.1994 and was treated till 25.4.1994. This time open reduction and internal fixation was done with place and screw and bone grafting was done."

3. The Doctor certified 15% permanent disability. Tribunal observed as follows:

"I had occasion to see the petitioner on the date of the trial. At present scars of burn injuries are seen below the right pinna and it has caused a

> disfiguration. Scars of burns are seen on the left arm and elbow and right upper arm. There is a scar on the forehead extending upward. The petitioner has produced Ext.A11 certificate which states that he is having a permanent disability of 15% due to the stiffness on the right elbow."

The Tribunal did not accept the same and awarded a compensation for disability at Rs.25,000/- on a rough and ready basis. We are of the view that considering the nature of the disability, the Tribunal went wrong in not relying on the medical certificate issued by the qualified Medical Practitioner. Since he was aged 23, multiplier can be fixed at '17' taking guidelines from 2nd Schedule. In the absence of data, Rs.1,500/- taken by the Tribunal as monthly income needs no further enhancement. If the compensation is calculated on the basis of 15% disability taking the income at Rs.1,500/- and 17 as the multiplier, the amount will be Rs.45,900/- (1500 x 12 x 15 x 17/100). Therefore the additional compensation payable for loss of earning capacity and disability is Rs.20,900/- (45,900-25,000) and the total compensation payable will be Rs,1,26,400/-. Since we found that there is 50% contributory negligence, the liability of the owner,

driver and Insurance Company of the jeep is Rs.63,200/-, out of which Rs.42,200/- was already directed to be paid with interest. Additional amount payable is Rs.21,000/-. The additional amount of Rs.21,000/- is directed to be deposited by the Insurance Company - fourth respondent with 7.5% interest from the date of the petition till the date of deposit. On deposit, the appellant is allowed to withdraw the amount.

Appeal is partly allowed.

J.B.Koshy,
Judge.

V.Giri,
Judge.

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